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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. ~~852~~ 10

MITCHELL CLIFTON ANDERSON, ET AL.,
Petitioner,

against

UNITED STATES OF AMERICA.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

ARTHUR GARFIELD HAYS,
On behalf of American Civil Liberties Union, Amicus Curiae.

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

The American Civil Liberties Union is a nation-wide organization devoted to the defense of civil liberties and the Bill of Rights. A fundamental premise of American jurisprudence which was incorporated in the Constitution is that each man shall receive a fair trial and shall not be forced to bear witness against himself. Where the abuses have been so prevalent as to preclude the possibility of a fair proceeding and in particular where confessions to a crime have been obtained under circumstances indicating

duress, the American Civil Liberties Union feels obliged to intervene to defend the basic civil liberties of the individuals involved.

It is the considered opinion of the American Civil Liberties Union, after an examination of the record, that the convictions of the petitioners here represent a flagrant violation of the civil rights of persons accused of a crime. This brief is accordingly directed solely to the constitutional issues involved in the admission in evidence of confessions signed by six of the petitioners here. But, of course, if the confessions were illegally obtained and introduced into evidence against all the petitioners, that would constitute reversible error as to all of them.

POINT ONE

The use of confessions obtained under circumstances amounting to duress and coercion to support a criminal conviction is a denial of petitioners' right against self-incrimination guaranteed by the Fifth Amendment.

That a confession is inadmissible in evidence unless made voluntarily is well settled by the decisions of this Court, *Ziang Sung Wan* v. *U. S.*, 266 U. S. 1, 69 L. Ed. 131; *Pupura* v. *U. S.*, 262 F. 473; *Chambers* v. *Florida*, 309 U. S. 227, 84 L. Ed. 716.

A review of the facts will serve to show that the confessions in this case were so obtained. On April 22, 1940 one Freed Long informed Sheriff Biggs and Federal Agent Mann that certain lines were to be blown up at 1:20 a.m. the following night; Long claims to have attended a meeting where the dynamiting was planned (R. 466-7). While

Sheriff Biggs and Agent Mann sat in a hotel, not having even informed the sheriff of the adjoining county of what was to take place in his jurisdiction, or taken any other steps to prevent the dynamiting, the explosions took place at the expected time and on the expected lines (R. 557).

In the ensuing days all of the petitioners were arrested by the deputy sheriffs, without warrant, without appearance before a magistrate or any show of legality whatsoever; one of them was taken illegally from one state to another (R. 548-9, 559-60, 192, 747). They were taken to the company owned YMCA building where they were questioned. This building had been taken over by Sheriff Biggs and his deputies who had been acting as guards during this strike. Five of them were thrown into a cell seven feet by seven feet in what is known as the City Jail. There were only two small bunks for two of the prisoners, the others being forced to lie on the concrete floor if they wished to sleep or to rest (R. 682-734). They were shuttled back and forth by the deputies from the jail to the YMCA, then being used to house the deputies. There they were intermittently questioned for from two to six hours at a time by the Federal Agents (R. 214). During this period the petitioners were given cold bologna sandwiches for breakfast, lunch and dinner (R. 227-653); denied anything to drink during protracted periods of questioning (R. 207); given allegedly doped coffee with their meals (R. 228); forbidden to see or even communicate with anyone. They were held thus imprisoned by guards paid by the company against whom they had been leading a strike.

Taken before the Federal Agents for questioning they were called "damned liars" (R. 206) and "damn lying sons of bitches" (R. 239); told that the FBI succeeded in

convicting 98% of those whom they prosecuted and that they were liable to a 35 year jail sentence (R. 700)—but that they would be recommended for parole if they would "talk" (R. 231-37).

While in such a state of mind—harassed and confused—the petitioners were assured that their bail would be reduced so that they could go free if they would but sign a statement. John David Queen was told he could go to see his baby, desperately ill with pneumonia (R. 683); Edward Simmonds that he could see his family and sick wife (R. 655); Felton Woodword that another prosecution against him by the Sheriff would be dropped (R. 695); Earl Hubbard that he could go out and get a nice meal and a drink of water (R. 671). All saw it as the only way to escape from this illegal imprisonment to which the Federal Agents were conveniently shutting their eyes. Illustrative of the Federal Agents' attitude is this testimony of Agent Rocke:

> "Q. You know whether he had anything to eat before that time? A. No, I was not interested in whether he had anything to eat.
>
> Q. You didn't care whether he had anything to eat? A. That is right; he was not in my custody." (R. 174).

The answers which the petitioners made were checked for truth by "confidential information" (R. 354, 5; 339, 40; 357; 398-9) which the agents had received; petitioners were told they were "damn liars" until their statements conformed to the agents' "confidential information". It took seven hours to finish Felton Moore Woodword's confession by this method (R. 341, 2, 3; 329).

All of the petitioners were so held for over twenty-four hours. Three of them withstood six days of this treatment before giving the desired signatures.

Only after they had signed were they permitted to see counsel or friends (R. 266, 645, 770, 773) or even taken before a magistrate. Then the reduction in bail was recommended, as had been promised. James H. Anderson, U. S. Commissioner for the District, testified:

> "Agent Mann requested that I fix bond of some of them, and I believe it was the five that pleaded guilty, at $1000." (R. 573, 4)

Bond had been set at $3000.

In the recent case of *Lisbena* v. *Calif.*, 86 L. Ed. 179, this court said:

> "We have not hesitated to set aside convictions based in whole or in substantial part upon confessions extorted in graver circumstances. These were secured by protracted and repeated questioning of ignorant and untutored persons in whose minds the power of the officers was greatly magnified; who sensed the adverse sentiment of the community and danger of mob violence, without advice of friends or counsel, some of whom had been taken by officers at night from the prison into dark and lonely places for questioning. Lisbena *v.* Calif. 86 L. Ed. 179, 190."

Here we have again "dragnet methods of arrest on suspicion without warrant," *Chambers* v. *Florida*, 309 U. S. 227. We have repeated questioning by Federal officers who the petitioners were assured (R. 272) and who they believed (R. 700) could do whatever they said they would do; prisoners held incommunicado in hostile surroundings and by hostile guards, upon whose activities the Federal

officers turned a blind eye. Men thus held were told by the agents that all they had to do was "sign this paper" to go free (R. 753, etc.) informed indirectly of Agent in Charge Plaxico's statement that he would be glad to recommend a parole for those who "came clean". Denied the right to seek advice as to the truth of these statements from counsel or friend, these men signed whatever they were told to sign.

This court has said:

> "The law cannot measure the force of the influence used, or decide upon its effect upon the mind of the prisoner and therefore excludes the declaration if any degree of influence has been exerted. In the case before us we find that an influence was exerted and any doubt as to whether the confession was voluntary must be determined in favor of the accused; we cannot escape the conclusion that error was committed by the trial court in admitting the confession under the circumstances disclosed by the record:" Bram *v.* U. S., 168 U. S. 532, 42 L. Ed. 568.

That there has been a degree of influence here would seem incontrovertible—even upon a view of the facts most favorable to the prosecution. The coercion here has been far stronger than that in *Bram* v. *U. S.*, 168 U. S. 532, or in *Pupura* v. *U. S.*, 262 Fed. 473, and is well within the authority of *Chambers* v. *Florida*, 309 U. S. 227. There would seem to be little room for doubt that the confessions of the petitioners were involuntary. The cases cited by the Circuit Court in support of the contrary view are effectively distinguished in Brief in Support of Petition for Certiorari, pages 21-25. The Circuit Court below in fact admits that irregularities at the time of the arrests

and questioning took place. *Anderson* v. *U. S.*, 124 F. (2d) 58, 67, 68. That the Court may not have been unprejudiced is illustrated by the addition of this sentence to a paragraph with which it has no rational connection: "Each of the confessing appellants was a promoter of the strike at the plant and active in making it effective." *Anderson* v. *U. S.*, 124 F. (2d) 58, 67. It glosses over the fact that armed deputies stood by at the questionings by stating that none of "the appellants was of tender age or of weak intellect or that any of them were in a weakened physical condition so as to be easily persuaded to do something against their will." The only question here is whether duress was used. It is submitted that the evidence adequately establishes that contention and that the opinion of the court below on this point was irrelevant and contrary to law.

The necessity of strictly enforcing the guarantees of the Fifth Amendment in regard to confessions is most apparent now when we are engaged in a war to abolish the very procedure complained of here. This court has already said (*Chambers* v. *Fla.*, 309 U. S. 227 (1940)):

> "We are not impressed by the argument that law enforcement methods such as those under review are necessary to uphold our laws. * * * *
>
> "No higher duty, no more solemn responsibility rests upon this Court than that of transmitting into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our Constitution, of whatever race, creed or persuasion."

CONCLUSION

For the reasons above stated, the Circuit Court of Appeals for the Sixth Circuit erred in sustaining the trial court's admission of petitioners' confessions in evidence against them, and it is therefore urged that this Court grant the writ sought.

Respectfully submitted,

ARTHUR GARFIELD HAYS,
Counsel for the American Civil Liberties Union, Amicus Curiae.

SUPREME COURT OF THE UNITED STATES,

No. 10.—October Term, 1942.

Mitchell Clifton Anderson, John Edward Simonds, Earl Hubbard, Felton Moore Woodward, Marion Luther Ellis, Robert Lee Ballew, John David Queen, Robert Lee Rhodes, Petitioners,

vs.

The United States of America.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[March 1, 1943.]

Mr. Justice Frankfurter delivered the opinion of the Court.

The petitioners were convicted, in the District Court for the Eastern District of Tennessee, of conspiring to damage property owned by the Tennessee Valley Authority, a corporation in which the United States is a stockholder, in violation of §§ 35(C) and 37 of the Criminal Code as amended (18 U. S. C. §§ 82, 88). The Circuit Court of Appeals for the Sixth Circuit affirmed the convictions, 124 F. 2d 58, and we brought the case here because it presented serious questions in the administration of federal criminal justice, 316 U. S. 651. The questions are similar to those decided this day in No. 25, *McNabb* v. *United States*. The two cases were argued at the same time and, as will appear from a short summary of a long record, are governed by the same considerations.[1]

In July 1939, the International Union of Mine, Mill and Smelter Workers struck against the Tennessee Copper Company's mines

[1] As in the *McNabb* case, there are no specific findings here as to the circumstances in which the incriminating statements in controversy were admitted against the petitioners. When these statements (excepting the confessions of three petitioners) were offered in evidence, the petitioners objected, and the trial court held a hearing in the absence of the jury to determine whether the statements were "voluntary". At the conclusion of this preliminary examination, the court overruled objections to the admissibility of these statements. The jury was recalled and the same testimony was repeated. The evidence relating to the confessions of three of the petitioners was, by stipulation, heard only once and in the presence of the jury. Referring to all this evidence as "certain parts of the proof", the judge thus charged

at Copperhill, Polk County, Tennessee. The strike was followed by a shut-down, but the mines were reopened in August after the sheriff brought in a number of special deputies who were in the company's pay. It was one of those obdurate mining strikes, and it continued into April of 1940, when the violence which gave rise to this prosecution occurred. On April 1st the company's operations were interrupted by the dynamiting of two power lines, owned by the TVA, from which the company obtained the power necessary for its activities. On April 14th two steel towers were dynamited. Two days later two special agents of the Federal Bureau of Investigation arrived in Copperhill to investigate the explosions. On April 24th two more power lines were blown down.

Thereupon, on the same day, the sheriff on his own initiative began to take into custody strikers, including the eight petitioners, whom he suspected of participation in the dynamiting. These arrests were made without warrant. With commendable candor in regard to this and other misconduct of officers of the law, the Government does not defend the legality of the arrests.[2] The men were not taken before any magistrate or other committing officer, as required by Tennessee law. Michie's Code (1938) § 11515. Instead they were taken to the company-owned Y. M. C. A. building in Copperhill, which was being used by the sheriff and his special deputies as their headquarters. On April 24th and 25th six more special agents of the Federal Bureau of Investigation arrived in Copperhill to assist in the investigation.

While the petitioners, with at least thirteen others, were thus held in custody at the Y. M. C. A. by the state officers, they were questioned by the federal agents intermittently over a period of six days during which they saw neither friends, relatives, nor counsel. Incriminating statements from six of the petitioners were the fruit of this interrogation. To determine whether these state-

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the jury regarding the admission of these incriminating statements: "There has been allowed for your consideration certain statements, confessions, or admissions alleged to have been made by some of the defendants. It is primarily for the Court to determine whether or not such statements are admissible for your consideration but it is wholly for you to determine how much weight or credit you will give to these statements." We shall assume as facts, therefore, only the testimony of Government witnesses and so much of the petitioners' evidence as is uncontradicted.

[2] Under Tennessee law an officer may arrest without a warrant when a felony has in fact been committed, and he has reasonable grounds for believing that the person arrested has committed it. Michie's Code (1938) § 11536. But willful destruction of power lines is only a misdemeanor under state law. *Id.*, § 10863(8).

ments were properly admitted in evidence, it is necessary to particularize the circumstances under which each confession was made.

Simonds. Simonds was arrested by two deputies on the afternoon of Wednesday, April 24th, and taken directly to the Y. M. C. A. After spending the night at the county jail, he was questioned by one of the federal agents for about an hour Thursday morning at the Y. M. C. A. The questioning was resumed at two o'clock in the afternoon by three agents who talked with him for about two hours; at seven o'clock that evening he was again questioned by two agents for another two hours. On Friday morning he was questioned for about an hour. And on Saturday he was questioned at three different periods throughout the afternoon and evening, each period lasting about half an hour. He was again questioned on Sunday afternoon for about an hour by two agents, one of whom described what occurred then as follows: "We went over the entire case with him, and pointed out the discrepancies in his story and the information we had developed on investigation, which knocked down his alibi, and out of a clear sky he said 'well, I want to tell you I am guilty.'" One of the agents thereupon took Simonds' written statement.

Hubbard. Hubbard was arrested by two deputies on Wednesday evening, April 24th, and taken to the Y. M. C. A. He, too, spent the night in the county jail. He was questioned by four agents at the Y. M. C. A. on Thursday afternoon for about two hours. Two of the agents questioned him again that evening for about two hours. At two o'clock Friday afternoon he was questioned for about forty-five minutes; at five o'clock he was questioned for another hour and a half. At seven-thirty Friday evening two agents questioned him for two more hours. He was questioned intermittently all day Saturday. One agent questioned him for periods of fifteen minutes two or three times during the morning and afternoon. Another questioned him for half an hour in the morning. A third agent talked with him for another two hours sometime during the day. And he was questioned again for about twenty minutes at six o'clock in the evening. He was not questioned on Sunday, but he was present during the questioning of Simonds by the federal officers that morning. After hearing Simonds admit his guilt, Hubbard also confessed.

Woodward. Woodward was also arrested on Wednesday afternoon, April 24th, by two deputies who took him first to the

Y. M. C. A. and then to the county jail. He was questioned by four federal officers for about two hours Thursday afternoon, and questioned again for another two hours that night. The officers questioned him for about fifteen minutes on Saturday. On Sunday he was brought into the room where Simonds and Hubbard were, and upon being confronted with their confessions, also confessed. On Monday the officers spent about five hours, from 11 a. m. until 2 p. m. and from about 3:30 until 7 or 7:30 p. m., questioning him in order to reduce his confession to writing. The manner of Woodward in giving his statement was thus described by the agent who questioned him: "He had considerable difficulty in recalling the details, he said his mind was not exactly clear on all of it, it took a good while in order to get the details of it, of how it happened, everything in the chronological order of events, and he also complained on occasions that his mind was befuddled in making the statement, upon relating about what he had done, and that is the reason it took so long to do it. It took the morning and the greater part of the afternoon."

Rhodes. Rhodes was arrested Sunday night, April 28th, and spent that night in the jail, sharing a cell with Woodward, Hubbard, Simonds, and Queen. He was questioned for about two hours by two agents on Monday morning, and then confessed.

Queen. Queen was arrested by two deputies on Sunday afternoon, April 28th, and was taken to the Y. M. C. A. After spending the night in jail, he was questioned for about an hour the following night by three agents. Upon being confronted with the confessions of the others, he admitted his guilt.

Ballew. Ballew was arrested by three deputies on Tuesday afternoon, April 30th, and taken to the Y. M. C. A. He was questioned there for about an hour by two federal officers. After spending the night in jail, he confessed the following morning.

The question for decision is whether these confessions—repudiated when those who made them took the witness stand at the trial—were properly admitted in evidence against all the petitioners, including Anderson and Ellis who did not confess. In the *McNabb* case we have held, 317 U. S. —, that incriminating statements obtained under the circumstances set forth in that opinion cannot be made the basis of convictions in the federal

courts. The considerations which led to that decision also govern this case. The detention of the petitioners by state officers was, as the Government concedes, in violation of the Tennessee statute which provides that "No person can be committed to prison for any criminal matter, until examination thereof be first had before some magistrate." Michie's Code (1938) § 11515. The courts of Tennessee exact scrupulous observance of this prohibition by its law officers. See *Polk* v. *State*, 170 Tenn. 270; *State ex rel. Morris* v. *National Surety Co.*, 162 Tenn. 547.

Unaided by relatives, friends, or counsel, the men were unlawfully held, some for days, and subjected to long questioning in the hostile atmosphere of a small company-dominated mining town. The men were not arrested by the federal officers until April 30th, and only then were they arraigned before a United States Commissioner, except for Ballew who was not arraigned until May 2nd or 3rd. There was a working arrangement between the federal officers and the sheriff of Polk County which made possible the abuses revealed by this record. Therefore, the fact that the federal officers themselves were not formally guilty of illegal conduct does not affect the admissibility of the evidence which they secured improperly through collaboration with state officers. *Gambino* v. *United States*, 275 U. S. 310, 314; *Byars* v. *United States*, 273 U. S. 28, 33-34.

The Government urges that, even if the confessions are held to be inadmissible, only the convictions of the six petitioners who confessed should be reversed. The prosecution rested principally on these confessions and the testimony of an informant, Freed Long, whose credibility was under severe attack. The incriminating statement of each petitioner implicated all the others, including those who did not confess. To be sure, the trial court devised a procedure under which the confessions were introduced without mention of the names of the other persons implicated. But their names were in fact revealed in the course of the cross-examination of the confessing petitioners. So also, while the trial judge appeared to admit the confessions "only to be used against the persons who made them", his charge bound the jury to no such restricted use of the confessions. On the contrary, from what the trial judge told them the jury had every right to assume that in ascertaining the guilt or innocence of each defendant they could consider the whole proof made at the trial. There is no reason to believe, therefore, that confessions

which came before the jury as an organic tissue of proof can be severed and given distributive significance by holding that they had a major share in the conviction of some of the petitioners and none at all as to the others. Since it was error to admit these confessions, we see no escape from the conclusion that the convictions of all the petitioners must be set aside.

Reversed.

Mr. Justice JACKSON and Mr. Justice RUTLEDGE took no part in the consideration or decision of this case.

Mr. Justice REED dissents.